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Supreme Court, U.S.
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No. 93-1917

In The

Supreme Court of the United States

October Term, 1993

SHONG-CHING TONG,
Petitioner

v.

FEDERAL DEPOSIT INSURANCE CORPORATION,
AS RECEIVER FOR ASSURED THRIFT AND
LOAN ASSOCIATION,
Respondent

On Petition For A Writ Of Certiorari

To The California Court Of Appeal

Second Appellate District,

Division Five

PETITIONER'S REPLY BRIEF

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TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	iii
I. The Court Should Grant The Petition To Resolve The Question Whether An Appeal Is A New Litigation	5
II. The Court Should Grant The Petition To Resolve The Question Whether An Appeal Brought By A Vexatious Litigant Should Be Dismissed Outright	5
III. The Court Should Grant The Petition To Resolve The Question Whether An Appellate Court Justice Has The Power To Declare A Party As A Vexatious Litigant Without A Hearing	5
IV. The Court Should Grant The Petition to Resolve The Question What Could Be Done To Prevent From Abusing of Judicial Power By Any Appellate Justice	6
CONCLUSION	6

INDEX TO APPENDICES

APPENDIX G

Order of Dismissal, Superior Court of the State of California, For the County

of Los Angeles, Case No. KC 004451 (B077108), Dated May 10, 1993 G - 1

APPENDIX H

Opinion, California Court of Appeal, Second Appellate District, Division Two, Case No. B077108 (KC 004451), Filed June 10, 1994 H - 1

APPENDIX I

Petitioner's July 12, 1994 letter to U. S. Solicitor General H - 1

TABLE OF AUTHORITIES

	Page
CASES:	
Robbins, et al. v. Foothill Nissan, et al. (1994) 93 Daily Journal, D.A.R. 3029, 22 Cal.App.4th 1769	2, 3, 4
Muller v. Tonner (1969) 82 Cal.Rptr. 738, 2 CA3d 445	5
STATUTES	
California Code of Civil Procedure, Section 391.7	5
TREATISE	
Black's Law Dictionary, 6th Ed.	5

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PETITIONER'S REPLY BRIEF

In Respondent's Brief, there are several statements which are not true as stated. Copies of documents sent to the Respondent and the Clerk's Office of this Court (Appendix I) will prove petitioner's assertions:

1. On March 27, 1991, petitioner filed two complaints in the Los Angeles Superior Court. One complaint was for damages for: 1) Fraud and conspiracy; 2) Embezzlement, Grand Theft, and Receiving Stolen Properties; 3) Conversion; and 4) Intentional Interference with Economic Prospective Advantage against Assured Thrift and Loan Association, Edward L. Billings, Chung Hsi Yeh, Tzu Lin Yeh, and ALDA Properties, Case No. KC004451. The other complaint was for damages for: 1) Malicious Prosecution; 2) Abuse of Process; 3) Intentional Infliction of Emotional Distress against Assured Thrift and Loan, Edward L. Billings, and Elliott Gayer, Case No. KC 004452 (Respondent's Brief, P. 2, Para 1 is not true).

2. On March 9, 1994, in Nelson L. Robbins, et al. v. Foothill Nissan, et al. (1994) 93 Daily Journal D.A.R. 3029 (Appendix

E), the California Court of Appeal, Second Appellate Dictrict, Division 5, held that:

> "Quite obviously, any case where suit has been filed before the FDIC is appointed as the Receiver, such as the present case, the toiling of the statute of limitation is irrelevant." at P. 3031

The Court further held that:

> "The filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the Receiver." at P. 3031

(Respondent's Brief, P. 2, Para 2 is not true).

3. On June 10, 1994, the California Court of Appeal, Second Appellate District, Division 2, based on the aforesaid published opinion in Robbins v. Foothill Nissan, Supra (Appendix E), reversed the Los Angeles Superior Court's Order of Dismissal of case no. KC004451 (Appendices G, H) (Respondent's

Brief, P. 3, Para 3 is not true).

4. In Robbins v. Foothill Nissan, Supra, and in case No. KC004451, Respondent did not file any "Petition for Rehearing" with the California Court of Appeal and did not file any "Petition for Review" with the California Supreme Court. If Respondent thinks its arguments are rational and have merit, and the California Court of Appeal Division 5 erred in Robbins v. Foothill Nissan and Division 2 erred in case no. KC004451, then, the failures of Respondent to take any action can clearly show Respondent's arguments in the instant case has no merit at all. Respondent has distorted, misrepresented, and misstated facts and legal authorities, as depicted in Appendices C, E, G, H, and I, in the instant case and in Robbins v. Foothill Nissan. **Therefore;**

1. The Court should grant the Petition, because an Appeal is not a new litigation (Black's Law Dictionary, 6th Ed.).

2. The Court should grant the petition, because California Code of Civil Procedure, Section 391.7 does not say to dismiss a valid litigation just because a party has been declared as a Vexatious Litigant (Muller v. Tonner (1969) 82 Cal.Rptr. 738, 2 CA3d 445).

3. The Court should grant the Petition, because the California Court of Appeal, Second Appellate District, Division 5, was in violation of Due Process of Law declaring petitioner as a Vexatious Litigant when petitioner filed a "Petition for Writ of Mandate" for a review of a non-appealable, non-final ruling in case no. VC 006762 (B080053) made by the Los Angeles Superior Court of the State of California, Norwalk Branch, entitled TONG v. ISUZU, et al.

4. The Court should grant the Petition, because the dismissal of petitioner's appeal in the instant case by the California Court of Appeal, Second Appellate District, Division 5 was erroneous and arbitrary. The reversal in case no. KC004451 (B077108) by Division 2 of California Court of Appeal, Second Appellate District proved the Division 5 of California Court of Appeal, Second Appellate District, erred in dismissing petitioner's appeal and some safeguards are needed so that no one could and should abuse the judicial power in the future.

CONCLUSION

For the foregoing reasons and in the best interest of justice and the integrity of the judicial system, the Petition for a Writ of Certiorari should be granted.

DATED: September 9, 1994

Shong-Ching Tong,
Petitioner Pro Se

APPENDIX G

FEDERAL DEPOSIT INSURANCE CORPORATION
LEGAL DIVISION
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Attorneys for Defendant, FEDERAL DEPOSIT INSURANCE CORPORATION As Liquidator for ASSURED THRIFT & LOAN ASSOCIATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SHONG-CHING TONG, CASE NO. KC004451

Plaintiff, ORDER OF DISMISSAL

v.

ASSURED THRIFT & LOAN ASSOCIATION, etc., et al.,

Defendants.

The motion by the FEDERAL DEPOSIT INSURANCE CORPORATION as Liquidator for Assured Thrift & Loan Association ("FDIC"), to dismiss plaintiff's complaint as against FDIC for lack of subject matter jurisdiction, came on regularly for

hearing before this court on April 28, 1993.

The Court, having reviewed the moving papers, opposition to the motion, reply, and oral argument of the parties, and good cause appearing therefor,

IT IS HEREBY ORDERED that plaintiff's Complaint as against FDIC, is hereby dismissed for lack of subject matter jurisdiction.

DATED: May 10, 1993

/S/ ROBERT A. DUKES

Honorable Robert A. Dukes
Judge of the Superior Court

APPENDIX H

NOT FOR PUBLICATION

IN THE COURT OF APPEAL

OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

SHONG-CHING TONG

Plaintiff and Appellant,

v.

FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver, etc.,

Defendant and Respondent.

No. B077108

(Super.Ct.No. KC 004451)

COURT OF APPEAL-SECOND DIST.

FILED

JUN 10, 1994

JOSEPH A. LANE, Clerk

Plaintiff appeals from an order dismissing his action against the Federal Deposit Insurance Corporation (FDIC), receiver for Assured Thrift and Loan Association (Assured), for lack of subject matter jurisdiction. We reverse the dismissal, but suggest, as plaintiff himself has urged, that this case

more suitably belongs in federal court, where another action has been commenced between the parties concerning the same subject matter.

FACTS . . . .

DISCUSSION . . . .

The jurisdictional issue presented is whether section 1821(d) ousts the jurisdiction of a state court over a suit against a financial institution subject to FDIC receiver-ship, which was commenced before the receiver-ship. . . .

In Robbins v. Foothill Nissan (1994) 22 Cal.App.4th 1769, Division 5 of this court recently performed an extended analysis of the statute, with respect to the same jurisdiction-al issue, and concluded that it did not deprive a superior court of jurisdiction acquired before commencement of an FDIC receivership. Upon independent consideration, we agree with the analysis and conclusion in

Robbins. . . .

The court therefore should not have dismissed this case for lack of jurisdiction. However. . . .

DISPOSITION

The order of dismissal is reversed. Plaintiff shall recover costs.

NOT FOR PUBLICATION

/S/
FUKUTO, J.

We concur:

/S/
BOREN, P. J.

/S/
GATES, J.

APPENDIX I

Shong-Ching Tong
1741 Phillips Dr.
Pomona, CA 91766

July 12, 1994

The Honorable Drew S. Days, III
Solicitor General
U. S. Department of Justice
Washington D. C. 20530

Re: Shong-Ching Tong v. FDIC
S. Ct. No. 93-1917

Dear Mr. Days:

Enclosed please find copies of documents in relation to my Petition for Writ of Certiorari.

I hope these documents would help you or your office in the preparation of the Government Response.

The following documents are enclosed for your reference:

1. Order of Dismissal, Case No. KC 004451, Los Angeles Superior Court, filed by FDIC on May 10, 1993.

2. Order of Dismissal, Case No. KC 004452, Los Angeles Superior Court, filed by FDIC on May 10, 1993.

3. Order: The Petition for Writ of Mandate Prohibition is denied. Case No. B080053, CA Court of Appeal, Second Appellate District, Division 5.

4. Orders directing plaintiff to show the present litigation has merit and stay of all proceeding. Case No. B077109, CA Court of Appeal, Second Appellate District, Division 5.

5. Declaration of Shong-Ching Tong in response to Court's Order to show the present litigation has merit and appellant's request that the Court stay the Order of November 24, 1993.

6. Slip Opinion. Case No. B077109, CA Court of Appeal, Second Appellate District, Division 5.

7. Motion for Reconsideration, Case No. B077109.

8. Order: Appellant's Motion for reconsideration is denied. Case No. B077109, CA Court of Appeal, Second Appellate District, Division 5.

9. Daily Appellate Report, case No. B070925, March 4, 1994, CA Court of Appeal, Second Appellate District, Division 5.

10. Slip Opinion, Case No. B077108, CA Court of Appeal, Second Appellate District, Division 2. The Appellat court reversed the trial court's dismissal.

As you can see from Attachment 3, the case no. B080053, has not been finally decided, because it's not an appeal.

As you can see from Attachments 4, 9

and 10, Division 5 of CA Court of Appeal, Second Appellate District had abused its judicial power.

If you would compare Attachments 5 and 7 with Attachment 6, you would be able to find out that Division 5 of CA Court of Appeal, Second Appellate District, has misstated facts in its Slip Opinion in Case No. B077109.

Please feel free to contact me if your office need any further information on this matter.

Very truly yours,

/S/

Shong-Ching Tong

CC: Honorable William K. Suter
Office of the Clerk
U. S. Supreme Court
Washington D. C. 20543